

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

REVEREND ROBERT W. POVISH,
Plaintiff,

v.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, JOHN E. WETZEL, in his
official capacity as Secretary of the Pennsylvania
Department of Corrections, MICHAEL
WENEROWICZ, in both his official capacity as
Superintendent of the State Correctional Institution
at Graterford, and in his individual capacity, and
MICHAEL ROMASCAVAGE, in both his official
capacity as personnel officer of the State
Correctional Institution at Graterford, and in his
individual capacity,
Defendants.

CIVIL ACTION
NO. 13-0197

ORDER

AND NOW, this 19th day of August, 2014, upon consideration of Defendants' second Motion to Dismiss for Failure to State a Claim (Docket #34), Plaintiff's response, and all supporting papers, it is hereby **ORDERED** that the motion is **GRANTED IN PART AND DENIED IN PART** as follows:

1. Count I is dismissed with prejudice.
2. Count II is not dismissed, though Defendants may continue to assert qualified immunity at a later stage of the case.
3. Count III is dismissed with prejudice.¹

BY THE COURT:

/s/ Jeffrey L. Schmehl
Jeffrey L. Schmehl, J.

¹ With the dismissal of Counts I and III with prejudice, plus the prior dismissal with prejudice of Count II with respect to the Department of Corrections, no claims remain or can be reasserted against the Department, and it should be terminated as a Defendant.